

# Order

Michigan Supreme Court  
Lansing, Michigan

May 16, 2006

Clifford W. Taylor,  
Chief Justice

ADM File No. 2003-38

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Proposed Amendment  
of Rule 6.106 of the  
Michigan Court Rules

---

On order of the Court, this is to advise that the Court is considering an amendment of Rule 6.106 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

## Rule 6.106 Pretrial Release

- (A) In General. At the defendant's first appearance before a court, unless an order in accordance with this rule was issued beforehand, the court must order that, pending trial, the defendant be
- (1) held in custody as provided in subrule (B);
  - (2) released on personal recognizance, ~~or~~ an unsecured appearance bond, or pursuant to subsection (C) for criminal nonpayment of support; or
  - (3) released conditionally, with or without money bail (ten percent, cash or surety).
- (B) Pretrial Release/Custody Order Under Const 1963, Art 1, § 15.
- (1) The court may deny pretrial release to
    - (a) a defendant charged with
      - (i) murder or treason, or
      - (ii) committing a violent felony and

[A] at the time of the commission of the violent felony, the defendant was on probation, parole, or released pending trial for another violent felony, or

[B] during the 15 years preceding the commission of the violent felony, the defendant had been convicted of 2 or more violent felonies under the laws of this state or substantially similar laws of the United States or another state arising out of separate incidents,

if the court finds that proof of the defendant's guilt is evident or the presumption great;

(b) a defendant charged with criminal sexual conduct in the first degree, armed robbery, or kidnapping with the intent to extort money or other valuable thing thereby, if the court finds that proof of the defendant's guilt is evident or the presumption great, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or present a danger to any other person.

(2) A "violent felony" within the meaning of subrule (B)(1) is a felony, an element of which involves a violent act or threat of a violent act against any other person.

(3) If the court determines as provided in subrule (B)(1) that the defendant may not be released, the court must order the defendant held in custody for a period not to exceed 90 days after the date of the order, excluding delays attributable to the defense, within which trial must begin or the court must immediately schedule a hearing and set the amount of bail.

(4) The court must state the reasons for an order of custody on the record and on a form approved by the State Court Administrative Office entitled "Custody Order." The completed form must be placed in the court file.

(C) Pretrial release pursuant to MCL 750.165. If the defendant is being held in custody on a criminal warrant issued pursuant to MCL 750.165 for failure to pay support, the court must set the bond at not less than \$500 or 25 percent of the unpaid support arrearage, whichever is greater, except for good cause shown on the record.

~~(C)~~(D) Release on Personal Recognizance. If the defendant is not ordered held in custody pursuant to subrule (B), the court must order the pretrial release of the defendant on personal recognizance, ~~or~~ on an unsecured appearance bond, or pursuant to subsection (C) for criminal nonpayment of support, subject to the conditions that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released, unless the court determines that such release will not reasonably ensure the appearance of the defendant as required, or that such release will present a danger to the public.

(D)-(I)[Relettered (E)-(J) but otherwise unchanged.]

Staff Comment: The proposed amendment incorporates new statutory requirements for setting bond in criminal nonsupport cases under MCL 750.165 as amended by 2004 PA 570.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by September 1, 2006, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2003-38. Your comments and the comments of others will be posted at: [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 16, 2006

*Corbin R. Davis*  
Clerk